

75-1912

Supreme Court, U. S.

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IN THE
SUPREME COURT OF THE UNITED STATES

DISTRICT UNEMPLOYMENT COMPENSATION BOARD,

Petitioner

V.

BENJAMIN ROSE INSTITUTE,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS

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Opinion Below

The opinion of the District of Columbia
Court of Appeals in Benjamin Rose Institute
v. District Unemployment Compensation Board,
April 14, 1976 is Appendix A.

Jurisdiction

The jurisdiction of the Court rests upon
28 U.S.C. Section 1257.

Question Presented

Whether or not under the interstate arrangement for combining employment and wages, wage credits accrued in the State of Ohio qualify for a combined wage claim for unemployment benefits filed in the District of Columbia based on military wage credits?

Statutes Involved

District of Columbia Code 1971, Title 46
Sec. 16 (a)

The Board is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one State shall be deemed to be services performed

entirely within any one of the States

(b) The Board is hereby authorized to enter into a reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby potential rights to benefits accumulated under the unemployment-compensation laws of one or more States or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Board finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(c) The Board shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the unemployment-compensation laws of other States which are approved by the Secretary of Labor in consultation with the State unemployment-compensation

agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations

Title 5 U.S.C. 8502 (b)

The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

Code of Federal Regulations 20 Part 614 et seq.

(a) . . . [T]he State agency of a State to which an individual's Federal military service and wages have been assigned under § 614.9 or transferred as provided in § 614.13 promptly shall determine such individual's entitlement to compensation and pay such compensation in the

same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to such individual if such service and wages had been included as employment and wages under the State unemployment compensation law.

Code of Federal Regulations 20 Part 616 et seq.

(a) Transfer of employment and wages-- payment of benefits. The paying State shall request the transfer of a Combined-Wage Claimant's employment and wages in all States during its base period, and shall determine his entitlement to benefits . . . under the provisions of its law based on employment and wages in the paying State, if any, and all such employment and wages transferred to it hereunder. The paying State shall apply all the provisions of its law to each determination made hereunder, even if the Combined-Wage Claimant has no earnings in covered employment in that State, . . .

Statement of the Case

A claimant, Valdon Walker, was separated from military service. Following this separation he obtained employment in Ohio in January 1973. He left work in June of 1973 to attend graduate school. In February 1974, he filed a claim for benefits in the District of Columbia. His military wage entitled him to a sum of \$32.00 per week. The District requested a transfer of wages from Ohio for consideration in establishing his benefit amount. These wages raised his benefit amount to \$86.00 per week. The District applied its law to these wages and held the claimant eligible for benefits. The Ohio employer appealed this determination. A hearing was held and the determination of eligibility based on the combined wage was affirmed. A further administrative appeal was taken and the determination was again affirmed. The employer then appealed to the District of Columbia Court of Appeals. This Court remanded the matter to the Board with the instruction that "it is for Ohio to determine according

to its law whether Walker's employment is subject to transfer to the district." A rehearing was scheduled at which time a statement from the Ohio agency was introduced which stated in effect that (1) the claimant's wages were correctly transferred to the District by Ohio; (2) the employer did not object to the transfer; (3) the employer had no right to appeal under Ohio law and (4) Ohio lacks authority to determine claimant's eligibility or disqualification by reason of wages transferred to the District and believes the matter is for the District. The Ohio agency then stated that under Ohio law a separation under conditions as they appear to exist would disqualify the individual from unemployment benefits for the duration of his unemployment following such a separation. The Appeals Examiner, based upon this additional evidence, again held the claimant to be eligible for benefits in the combined amount. An administrative appeal followed and the employer again appealed to the District of Columbia Court of Appeals. This Court reversed

the Board and held that Ohio law applied and that the claimant was ineligible to use the Ohio wages in computing his claim. The Board requested and was granted a stay of the mandate of the District of Columbia Court of Appeals. This Prayer for a Writ of Certiorari follows.

ARGUMENT

The issuance of the Writ is requested in order that the Petitioner may be in conformance with the Department of Labor and the rest of the States in its procedures for properly administering the Unemployment Compensation Act.

The Petitioner submits that the interpretation which the District of Columbia Court of Appeals has given to the Federal Law is not in accordance with the interpretation placed upon this law by the Department of Labor and which is utilized by all other States and jurisdiction.

This suit arose as a result of a claim made under an interstate agreement entered into among the various states for uniform administering of

claims made by persons which have wages in more than one State. The wage credits are utilized in the filing of unemployment compensation claims and are known under the general term of "combined wages" or a "combined wage claim".

A problem arose in the payment of claims to persons who had worked in more than one State. The individual claimants were being denied benefits or portions of benefits because they had worked in more than one State. In 1971 the Congress enacted a bill designed to alleviate this problem. This legislation (U.S. Code, Title 26, Section 3304(a)(9)(B) states:

"(a) Requirements:

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that--

(9)(B) The State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the

the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangements shall include provisions for (i) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

Pursuant to this mandate, regulations (Code of Federal Regulations 20 CFR Section 616) were promulgated. These regulations provide the guidelines for all states when a combined wage claim is filed. These regulations became effective after December 31, 1971.

Pursuant to the regulation, your Petitioner obtained transfer of wages from Ohio and combined them with the claimant's Federal military wages which were assigned to the District.

The Respondent appealed a determination of eligibility issued by the Petitioner contending that the claimant was ineligible because his

separation from his Ohio employment was a "quit without just cause under Section 4141.39(D) of the Ohio law. Following administrative process the Petitioner made a final ruling holding the determination of eligibility on the ground that under the District law the separation was not disqualifying.

The Respondent appealed to the District of Columbia Court of Appeals. The Court remanded the case to the Petitioner for further proceedings stating "it is for Ohio to determine according to its law whether Walker's employment is subject to transfer to the District."

A rehearing was held and additional evidence was adduced from Ohio. The Ohio agency stated in effect that: (1) claimant's employment and wages were correctly transferred to the District by Ohio (2) the employer did not object to the transfer (3) the employer had no right to appeal the transfer under Ohio law and (4) Ohio lacks authority to determine the claimant's eligibility or disqualification by reason of wages transferred to the District and believes this matter is for

the District. The Ohio agency added a sentence which stated that "under Ohio law a separation under the conditions as they appear to be in this case would generally be considered a quit without just cause and would disqualify the individual from unemployment benefits for the duration of his unemployment following such a separation".

The District Court of Appeals held that this last sentence (which was not based upon any evidence before the Ohio agency) adequately advised the Petitioner of the Ohio law which was controlling on this point and reversed the decision of the Petitioner.

The Petitioner submits that the Court erred in its interpretation of 20 CFR 616.

There are three sections of 20 CFR 616 which the Petitioner submits are controlling in this case. The first Section 616.6 under the heading "Definitions" states:

(e) Paying State. (1) The State in which a Combined-Wage Claimant files a Combined Wage Claim provided he (i) is qualified for unemploy-

ment benefits in that State, or (ii) is not qualified in any State.

(f) Transferring State. A State in which a Combined-Wage Claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

The second 20 CFR 616.8 under the heading "Responsibilities of the paying State"

(a) Transfer of employment and wages-payment of benefits. The paying State shall request the transfer of a Combined-Wage Claimant's employment and wages in all States during its base period, and shall determine his entitlement to benefits (including additional benefits, extended benefits and dependents' allowances when applicable) under the provisions of its law based on employment and wages in the paying State, if any, and all such employment and wages transferred to it hereunder. The paying State shall apply all the provisions of its law to each determination made hereunder, even if the Combined-Wage Claimant has no earnings in

covered employment in that State, except that the paying State may not determine an issue which has previously been adjudicated by a transferring State. Such exception shall not apply, however, if the transferring State's determination of the issue resulted in making the Combined-Wage Claim possible under § 516.7(b)(2). If the paying State fails to establish a benefit year for the Combined-Wage Claimant, or if he withdraws his claim as provided herein, it shall return to each transferring State all employment and wages thus unused.

(b) Notices of determination. The paying State shall give to the claimant a notice of each of its determinations on his Combined-Wage Claim that he is required to receive under the Secretary's Claim Determinations Standard and the contents of such notice shall meet such standard. When the claimant is filing his Combined-Wage Claims in a State other than the paying State, the paying State shall send a copy of each such notice to the local office in which the claimant filed

such claims.

(c) Redeterminations. Redeterminations may be made by the paying State in accordance with its law based on additional or corrected information received from any source, including a transferring State, except that such information shall not be used as a basis for changing the paying State if benefits have been paid under the Combined-Wage Claim.

(d) Appeals. (1) Except as provided in subparagraph (3) of this paragraph, where the claimant files his Combined-Wage Claim in the paying State, any protest, request for redetermination or appeal shall be in accordance with the law of such State.

(2) Where the claimant files his Combined Wage Claim in a State other than the paying State, or under the circumstances described in subparagraph (3) of this paragraph, any protest, request for redetermination or appeal shall be in accordance with the Interstate Benefit Payment Plan.

(3) To the extent that any protest, request for redetermination or appeal involves a dispute as to the coverage of the employing unit or services in a transferring State, or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination or appeal shall be decided by the transferring State in accordance with its law

The third 616.9 under the heading "Responsibilities of Transferring States, in pertinent part, states:

(2) Transfer of employment and wages. Each transferring State shall promptly transfer to the paying State the employment and wages the Combined-Wage Claimant had in covered employment during the base period of the paying State. Any employment and wages so transferred shall be transferred without restriction as to their use for determination and benefit payments under the provisions of the paying State's law.

(b) Employment and wages not transferable. Employment and wages transferred to the paying

State by a transferring State shall not include--

(1) Any employment and wages which have been transferred to any other paying State and not returned unused, or which have been used in the transferring State as the basis of a monetary determination which established a benefit year.

(2) Any employment and wages which have been canceled or are otherwise unavailable to the claimant as a result of a determination by the transferring State made prior to its receipt of the request for transfer, if such determination has become final or is in the process of appeal but is still pending. If the appeal is finally decided in favor of the Combined-Wage Claimant any employment and wages involved in the appeal shall be made by such paying State.

Under these regulations the Petitioner is the Paying State. The claimant filed for benefits in this jurisdiction and was qualified for benefits because of his military wages. Ohio is the transferring State as claimant Walker had

covered employment and wages in that State during the District's base period.

The duties of the Petitioner are clearly set forth in Section 616.8(a). The paying State after requesting the transfer of wages shall determine the claimant's entitlement to benefits under the provisions of its law based upon employment and wages and upon the wages and employment transferred to it.

The duty of the transferring state, i.e. Ohio is to transfer the wages to the paying State.

The regulation states in at least three places, i. e. 616.6(f), 616.8(a) and 616.9(a) that the determination as to entitlement to benefits shall be made under the law of the paying State. The decision of the District of Columbia states that the eligibility (entitlement to benefits) shall be made under Ohio law.

The Petitioner submits that Court erred in its interpretation of 616.8(d)(3). This section, Petitioner submits, was intended to cover questions as to whether a claimant was employed in covered

employment or as to the amount of wages to be transferred. These of course are question to be decided by each state prior to a transfer of wages to a paying State. This is not an issue in this case. Ohio stated that the wages were for covered employment and were otherwise correct.

After the claimant established a valid claim he requested that the Combined-Wage Claim be applied since he had wages in his base period in the State of Ohio available for use in his claim in the District of Columbia. Both the District of Columbia and the State of Ohio are parties to the agreement for procedure for processing and payment under the combined wage arrangement. To receive benefits a claimant must qualify under the law of the paying State and as a participant in the agreement, the transferring State must transfer the claimant's wages paid to him in that State. The only question to be decided under the law of the transferring State are matters involving the transfer of wages.

The Petitioner properly found that under the law the wages were correctly transferred. The case is then controlled by 20 CFR, Section 616.8 (d) (1) which states:

"Except as provided in subparagraph (3) of the paragraph, where the claimant filed his Combined-Wage Claim in the paying State, any protest, request for redetermination or appeal shall be in accordance with the law of such State."

The District of Columbia Court of Appeals' decree on remand of the first case stated:

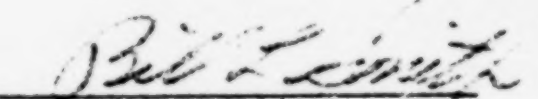
". . .[I]t is for Ohio to determine according to its law whether Walker's employment is subject to transfer to the District." In reversing the decision of the Petitioner in the second appeal, the Court's decision was based upon the conclusion that the question of eligibility or disqualification which is the basic point of contention in this cause is to be decided under Ohio law (Appendix A). It would thus appear that

the decisions reached in each case are distinguishable.

Conclusion


The Court's ruling is inconsistent with the common understanding and practice among the States under the Interstate arrangement, which was approved by the Secretary of Labor, in consultation with the State Unemployment Compensation agencies in accordance with the Internal Revenue Code of 1954 (Sec. 3304 (a) (9) (B)).

In view of the above, the Petitioner prays that Petition for the Writ of Certiorari be granted.


Bill L. Smith

Certificate of Service

I hereby certify that copies of the foregoing Petition for Writ of Certiorari have been mailed, postage prepaid, to William F. Taylor, Esq., Cox, Langford & Brown, 21 Dupont Circle, N.W., Washington, D.C. 20036, Counsel for the Respondent.


Bill L. Smith

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 10130

BENJAMIN ROSE INSTITUTE, PETITIONER,

v.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD,
RESPONDENT.

Petition for Review of a Decision of the
District Unemployment Compensation Board

(Submitted February 18, 1976 Decided April 14, 1976)

William F. Taylor was on the brief for petitioner. *Robert D. Papkin* also entered an appearance for petitioner.

George A. Ross, Robert J. Hallock and Bill L. Smith were on the brief for respondent.

Before KELLY, GALLAGHER and HARRIS, Associate Judges.

KELLY, Associate Judge: This case in which petitioner contests the amount of unemployment benefits awarded to Valdon Walker, Jr., a former employee of petitioner, is before this court for the second time. On an earlier appeal,¹ we set aside a District Unemployment Compensation Board (DUCB) decision allowing Walker's benefits to be computed by combining his prior military

¹ *Benjamin Rose Institute v. District Unemp. Comp. Bd.*, D.C.App., 338 A.2d 104 (1975).

service with his later employment by petitioner in Ohio. There was not then and there is not now a dispute that Walker's military service qualified him for benefits in the District. Our remand was for a determination of whether his Ohio employment qualified him for unemployment benefits in that state and consequently whether there existed any covered employment which could be transferred to the District and combined with his military service.² It was specifically based upon the Interstate Arrangement for Combining Employment and Wages, 20 C.F.R. § 616.8(d)(3)(1974), which states:

To the extent that any protest, request for redetermination or appeal involves a dispute as to the coverage of the employing unit or services in a transferring State [Ohio], or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination or appeal shall be decided by the transferring State [Ohio] in accordance with its law.

Upon remand, the DUCB propounded by letter to the Ohio Bureau of Employment Services the following questions: (1) Were Walker's wages correctly transferred? (2) Did petitioner object to the transfer? (3) Could petitioner appeal the transfer under Ohio law? (4) Does Ohio have the authority under its laws to determine Walker's eligibility to receive benefits in the District? Ohio replied that Walker's wages had been correctly transferred on the proper form; that petitioner had no right under Ohio law to either object to or appeal from the transfer of wages; and that Walker's eligibility for combined benefits was purely a matter of District law.

² The DUCB both in its earlier decision and in the decision appealed from here permitted such combining which resulted in an increase of Walker's benefits from \$22 to \$80 per week.

After this reply, another hearing was held at which the sole witness was a representative of the petitioner. Thereafter the DUCB issued a decision which again upheld the increased benefits to Walker and which stated that the wages had been correctly transferred; that District law controlled Walker's eligibility; and that under District law his reason for leaving petitioner's employment was not disqualifying.³ This is the identical rationale which we rejected on the previous appeal.

Petitioner contends that the DUCB failed to comply with our remand order by failing to apply Ohio law to Walker's employment with petitioner. On this issue we note that DUCB's questions to Ohio were both imprecise and irrelevant. There is no dispute that a combined wage form was sent to Ohio and that Ohio dutifully completed and returned it to the DUCB. However, no question was directed to whether Walker's reason for quitting petitioner's employ would disqualify him from benefits in Ohio. The remaining questions concerning petitioner's right to object or appeal under Ohio law are irrelevant as the DUCB, pursuant to D.C. Code 1973, § 46-313(b), has promulgated regulations which give petitioner the right to appeal here in the District.⁴

³ D.C. Code 1973, § 46-310(a) disqualifies a claimant if he has "left his most recent work voluntarily without good cause"

⁴ 18 D.C. Rules and Regulations § 3.1 provides:

APPEAL OF CLAIM DETERMINATION.

Any claimant, his most recent employer and any of his base period employers may appeal to the Board from the determination of any agent of the Board with respect to the payments of benefits to such claimant provided the appeal is filed within ten days after notification thereof or after the date such notification was mailed to his last known address. . . .

Despite the lack of precision and relevancy in the questions asked, the Ohio response nonetheless stated:

Under the provisions of the Ohio law a separation under the conditions as they appear to be in this case would generally be considered a quit without just cause and would disqualify the individual from employment benefits for the duration of his unemployment following such a separation.

The DUCB's decision was based solely upon Ohio's answers to the questions asked and simply ignored the statement concerning Walker's disqualification under Ohio law. This statement adequately apprised the DUCB of Ohio law, however, and thus it is clear that Walker does not qualify for a combined wage claim in the District. Since we previously held that Ohio law on this point is controlling, we reverse the decision of the District Unemployment Compensation Board awarding Walker increased benefits based upon a combined wage claim.

So ordered.

75-1912

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DISTRICT UNEMPLOYMENT COMPENSATION BOARD,

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BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI
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BRIEF IN OPPOSITION
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TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Counter Statement of the Case

Mr. Valdon Walker, Jr. was employed
by the Respondent, the Benjamin Rose
Institute, in Ohio from January 24, 1973
to June 3, 1973. On the latter date,

Mr. Walker voluntarily resigned his employment with the Respondent in order to return to school. Prior to his employment with the Respondent, Mr. Walker had served in the United States armed forces. After leaving the employ of the Respondent, Mr. Walker entered graduate school. He subsequently left school and on March 5, 1974, applied to the District of Columbia Unemployment Compensation Board for unemployment compensation benefits based on the combined wages paid him by the Respondent in Ohio and by the United States armed forces.

Mr. Walker was found to be entitled to benefits. The Respondent appealed this determination to an Appeals Examiner of the Board. The basis of the Respondent's appeal was that under Ohio law the claim-

ant had not left his employment with the Respondent for good cause and so was not entitled to benefits based on his employment with the Respondent in Ohio. The Examiner ruled that the claimant was entitled to benefits based on his combined earnings, including those earned while employed by the Respondent in Ohio. The Respondent appealed this decision to the Board, which affirmed the Examiner.

The Respondent then filed a petition for review of the Board's decision with the District of Columbia Court of Appeals. That court set aside the Board's decision and stated that claimant's "right to benefits based on his employment with petitioner must be determined under Ohio law." Benjamin Rose Institute v. District Unemployment Compensation Board,

338 A. 2d 104 (D.C. Ct. of App. 1975).

Accordingly, the Court of Appeals remanded the case to the Board for further proceedings in accordance with the court's opinion.

The Board did not appeal or seek review of the above decision of the Court of Appeals. Rather, the Board directed that a further hearing be held before an Appeals Examiner. Following the hearing, the Examiner rendered a decision in which he applied District of Columbia law and so determined that the claimant had left his employment with the Petitioner for good cause and was entitled to benefits based on such employment.

The Respondent appealed this decision to the Board which affirmed the Appeals Examiner. The Respondent then

filed a second petition for review with the District of Columbia Court of Appeals.

The Court of Appeals again reversed the Board. The Court of Appeals stated that in its first opinion it had held that Ohio law is controlling on the question of Mr. Walker's right to benefits based on his employment with respondent in Ohio. The Court of Appeals concluded (1) that the Ohio Bureau of Employment Services had advised the Board that under Ohio law Mr. Walker had no such rights and (2) that therefore he was not entitled to increased benefits based upon a combined wage claim.

The Board then filed a Petition for Writ of Certiorari with the United States Supreme Court.

ARGUMENT

The issue which Petitioner seeks to have this Court review is res judicata. In Benjamin Rose Institute v. District Unemployment Compensation Board, 338 A. 2d 104 (D.C. App. 1975), the District of Columbia Court of Appeals held that Mr. Walker's right to unemployment benefits based on his employment with Respondent in Ohio must be determined under Ohio law. The Petitioner did not appeal or seek review of this decision.

Yet this is the precise issue upon which Petitioner now seeks Supreme Court review.

The only conclusion reached in the District of Columbia Court of Appeals decision of which Petitioner has sought

review from this Court is that if Ohio law is applied, the employee in this case is not entitled to unemployment compensation benefits based on his employment with Respondent in Ohio. But Petitioner does not dispute this conclusion. Rather, Petitioner has again raised the contention, which was rejected by the Court of Appeals in its first Benjamin Rose decision that District of Columbia, and not Ohio, law must be used to determine the employee's eligibility for benefits.

The District of Columbia Court of Appeals clearly stated in its second opinion that "we previously held [in the Court of Appeals first decision] that Ohio law on this point is controlling." When Petitioner failed to seek review of this holding, it became res judicata.

See Goff v. Finch, 317 F. Supp. 35 (M.D. Tenn. 1970), aff'd 445 F. 2d 852 (6th Cir. 1971); Jamerson v. Lennox, 356 F. Supp. 1164 (E.D. Penn. 1973), aff'd 414 U.S. 802 (1973). Petitioner cannot now obtain review of this issue from this Court. All of the arguments raised by Petitioner in its brief (which Respondent has not addressed but does not concede) should have been raised in a petition seeking review of the District of Columbia Court of Appeals' first decision. It is simply too late for Petitioner to raise them now.

CONCLUSION

The ruling of the District of Columbia Court of Appeals which Petitioner seeks to have this Court review is res

judicata and so not the proper subject for Supreme Court review. Therefore, Respondent prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

Robert D. Papkin
Robert D. Papkin

William F. Taylor
William F. Taylor

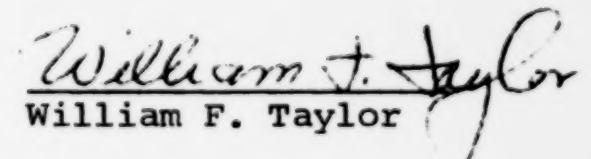
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Counsel for Respondent,
Benjamin Rose Institute

July 30, 1976

Certificate of Service

I hereby certify that three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari have been mailed with first class postage prepaid to Bill L. Smith, District Unemployment Compensation Board, Employment Security Building, 6th and Pennsylvania Avenue, N.W., Washington, D. C. 20001, Counsel for Petitioner.


William F. Taylor

July 30, 1976